IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

LA.App..No. 44 of 2002(A)

LAR.125/1997 of PRINCIPAL SUB COURT, NORTH PARAVUR
.....

APPELLANT: RESPONDENT

STATE OF KERALA.

BY GOVERNMENT PLEADER SRI K.V.MANOJKUMAR
ADVOCATE GENERAL

RESPONDENT: CLAIMANT

DHARMAN, S/O.VELAYUDHAN,
ARAKKAL, PERUMPADANNA, N.PARUR.

BY ADV. SRI.T.R.ASWAS
SRI.ANIL KUMAR SREEDHARAN
GOVERNMENT PLEADER

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A. 44 of 2002 & Cross-appeal

Dated: November 1, 2007

JUDGMENT

Kurian Joseph, J.

Both the acquisitioning authority and the claimant are aggrieved by the fixation of land value by the Sub Court, North Paravur in LAR 125/1997. The acquisition is for NH-17 of North Paravur. The Reference Court fixed the land value at 60% over and above the value awarded by the land acquisition officer. In view of the judgment of this court in LAA No.1531/2000, such fixation cannot be held to be excessive. The relied on judgment also has become final. Therefore LAA 44/2002 filed by the State is dismissed.

2. As far as the cross-appeal is concerned, the contention is that the acquired property is similar and similarly situated as in LAR 253/1997 wherein the Reference Court has granted enhancement at the rate of 95.9%. The land value fixed in LAR 253/1997 has become final in view of the judgment in LAA 52/2001. There is no evidence available before court as to whether the acquired property and the property in LAR 253/97 are similar and similarly situated. True, the judgment is produced before this court. Unless the same is available before the Reference Court, the comparability and similarity cannot be looked into.

3. The learned Government Pleader submits that in case this court remits the matter to the Reference Court, the State may not be burdened with the liability to pay interest at the rate of 15% for the period covered by the pendency of the cross-objection, in the event of the Reference Court granting enhancement. We find justification in the submission, since the best available evidence was not produced by the claimant before the Reference Court.

4. As we feel that in the interests of justice a further chance is to be given to the claimant, we set aside the judgment and decree in LAR 144/97 on the file of the Sub Court, North Paravur and remit the same to the Reference Court with a direction to look into the similarity and comparability of the acquired property with that of the property covered by LAR 253/1997. The parties shall appear before the Reference Court on 3.12.2007. Thereafter the Reference Court shall dispose of the reference within another two months. It is made clear that in the event of the Reference Court granting any enhancement to the claimant in excess of 60% already granted, the Reference Court shall make it clear in the decree that the claimant shall not be entitled to interest at the rate of 15% from the date of filing of the cross-objection viz. 22.3.2005 to 1.11.2007. It is also made clear that in any event the enhancement shall not exceed 85% of the value fixed by the land acquisition officer since the claim is limited by the cross-appellant to that extent before this court.

In view of the remand as above, the cross-objector shall be entitled to refund of court fee.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-

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